

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

NORDEVIN, INC.,	)	
	)	
Appellant,	)	PCHB No. 90-202
	)	
v.	)	
	)	
STATE OF WASHINGTON,	)	FINAL FINDINGS OF FACT,
DEPARTMENT OF ECOLOGY,	)	CONCLUSIONS OF LAW
	)	AND ORDER
Respondent.	)	

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This matter involves Nordevin, Inc.'s appeal of two Department of Ecology orders: Enforcement Order No. DE 90-S223 and Penalty Order No. DE 90-S224 (\$20,000), issued in 1990. It has been alleged that on January 9 and 31, 1990, and May 15, 1990, Nordevin caused or allowed the discharge or release of materials from its property, in Puyallup, Washington, into state waters in violation of state law.

Pre-hearing briefs were filed on April 14, 1992. The formal hearing on the merits was held on April 17, 20, 24, and April 27, 1992 in Lacey, Washington. Present for the Pollution Control Hearings Board were Attorney Member Judith A. Bendor, Presiding, Chairman Harold S. Zimmerman, and Member Annette S. McGee. Appellant Nordevin, Inc., was represented by Attorney Sheri L. Flies, General Counsel. Respondent Department of Ecology was represented by Assistant Attorney General Rebecca A. Vandergriff. Court Reporters affiliated with Gene S. Barker and Associates (Olympia) took the proceedings. The parties ordered the transcript for April 27, 1992.

FINAL FINDINGS OF FACT,  
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(1)

1 Witnesses were sworn and testified. Exhibits were admitted.  
2 Closing argument was filed on May 7, 1992. Board Members who were not  
3 present during the entire hearing have reviewed the transcript and  
4 tape recordings.

5 On June 17, 1992, after Motions Practice, the Board issued an  
6 Order regarding judicial notice/evidence.

7 Having considered the foregoing and having deliberated, the Board  
8 issues these:

9 FINDINGS OF FACT

10 I

11 Nordevin, Inc. is a Washington Company which buys land, clears  
12 it, and prepares it for sale to builders of homes. At the time of the  
13 hearing, the company was solely owned by Mr. Par Lindstrom, who is  
14 also the chief executive officer.

15 In January 1989 Nordevin bought about 38 acres of property known  
16 as "Deer Creek" in the City of Puyallup, for site preparation for  
17 75(+) single family homes. Prior to this project, the owner had been  
18 involved with 15 to 20 other development projects; two to three were  
19 of comparable size to "Deer Creek".

20 II

21 Prior to purchasing the property, Nordevin had submitted a plat  
22 application and environmental checklist to the City. The checklist  
23 outlined the site's physical characteristics, and the company's  
24

25 FINAL FINDINGS OF FACT,  
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1 assessment of the likely environmental impact of the proposed  
2 project. The checklist noted the site's steep slopes, and the fine  
3 silty soil in the southern area. The City issued a Determination of  
4 Non-Significance in February 1990.

### 5 III

6 The site was forested mostly with alder and cedar, with the  
7 exception of the northeast area that was in grass. It is a steeply  
8 sloped property, with a 240 foot elevation rise from north to south.  
9 The slopes varied from 8-15% to 35-40%. There is a rocky substrate on  
10 part of the site.

### 11 IV

12 A creek known as Deer Creek enters the site at the south, after  
13 crossing property known as Kodiak (in particular, The Pointe  
14 development). This creek flows northerly across the Nordevin site,  
15 exits, and ultimately flows into the Puyallup River. At 27th St.  
16 S.E., off the Nordevin property, the stream enters a culvert which has  
17 a 10 foot drop. This culvert, as currently designed, effectively bars  
18 any upstream migration of fish. The culvert, however, does not  
19 prevent the downstream movement of sediment.

20 Cutthroat trout have been found in Deer Creek below the culvert.  
21 There are also sculpin and crayfish. Portions of Deer Creek have some  
22 potential for salmon rearing habitat. Other areas have been heavily  
23 affected by development, with channelization and a 500 foot long  
24

1 culvert. There is heavy sediment deposition, particularly in areas  
2 with low stream gradient.

3 Another stream, known as the Shaw Road Drainage, runs along the  
4 east side of the Nordevin site. It also flows into the Puyallup  
5 River.

6 During the 1989-1990 rainy season, the streams' flows were  
7 substantial, with widths up to eight feet and depth of six feet.  
8 During August and September the flows can be a trickle.

9 To the east of the Nordevin site is a development formerly known  
10 as Janelle Estates, now Chrystal Ridge. It drains into the Shaw Road  
11 Drainage.

12 A pipeline crosses the Nordevin site through an easement.

13 V

14 Nordevin began clearing and grubbing the site in June 1989.  
15 Because it was going to do some work in Deer Creek, the company was  
16 required to obtain a hydraulics permit from the Washington Department  
17 of Fisheries.

18 Mr. Robel with Fisheries visited the site in July 1989. He  
19 provided some initial suggestions about culvert design and placement  
20 for the stream crossings. The Department has a policy of no net  
21 habitat loss from projects. New culverts are designed not only to  
22 facilitate fish passage, but to provide habitat within the culvert  
23 itself.

1 A hydraulics permit was issued on August 23, 1989, with an  
2 October 1, 1989 completion date. The permit contained several  
3 conditions, including armoring the culverts as necessary to prevent  
4 erosion, and requiring that every effort be exercised during all  
5 phases of the project to prevent silt-laden water from leaving the  
6 site. Fisheries did not approve Nordevin's storm drainage plan as  
7 there was inadequate water quality protection for fish life, i.e. no  
8 biofiltration.

#### 9 VI

10 On August 16, 1989, the City of Puyallup approved Nordevin's  
11 Temporary Erosion Control Plan (Erosion Plan).

12 Nordevin continued clearing the site and began grading.  
13 Eventually 50,000 cubic yards of soil were moved, 5,000 truck loads,  
14 from one area of the site to another. The fall 1989 grading was  
15 stopped in early October. After the grading, some mulch was put on  
16 bare slopes.

17 Several detention ponds were built for stormwater runoff.  
18 Siltation fences were placed along stream beds. Some check dams,  
19 consisting of hay bales, were placed in Deer Creek to slow down the  
20 water and assist in filtering out sediments.

#### 21 VII

22 Mr. Robel returned to the site on November 13, 1992, and met with  
23 Mr. Lindstrom and Nordevin's construction manager. The culverts had  
24

1 | been placed, but were not completed, i.e. no armoring or stream bed  
2 | replacement. The silt curtain fences were not buried into the ground,  
3 | and silt-laden waters were flowing under, not through the fine  
4 | fabric. Serious erosion was occurring. Gullies and channels had been  
5 | created. The lower pond was full of muddy water. There was little  
6 | straw or other mulch on the graded, cleared slopes.

7 | Fisheries made some recommendations. During the meeting, the  
8 | manager conceded Nordevin had not complied with the Erosion Plan.

9 | VIII

10 | Robel contacted the City about his concerns. He also called the  
11 | Department of Ecology, and spoke with Maggie Dutch in the non-point  
12 | control program.

13 | As a result of the Fisheries call, Ms. Dutch and another  
14 | inspector visited the site on November 21, 1989 and met with the  
15 | construction manager. It was raining. It is customary for Ecology to  
16 | inspect in such weather, as it is easier to assess the actual  
17 | effectiveness of erosion control measures.

18 | Deer Creek upstream of the Nordevin property was flowing clear.

19 | On the Nordevin property, a lot of the graded land was bare.  
20 | Little re-growth had occurred since the fall work. Workers were  
21 | spreading straw mulch on the ground.

22 | The lower sediment pond was full of muddy water. Nordevin was  
23 | pumping the pond water out, and sending it uphill, discharging it  
24 |  
25 |

1 through several hay bales before the water entered the upper pond.  
2 From the upper pond, the water was discharged through a culvert and  
3 several more hay bales into Deer Creek. The discharged water appeared  
4 to be just as muddy as when it was in the lower pond.

5 At Ecology's request, the pump was turned off. Possible erosion  
6 control measures were discussed. The manager was informed that the  
7 discharge violated state water quality laws and could not continue.  
8 He conceded the erosion measures in place were inadequate.

9 Ecology took no enforcement action as a result of this visit.  
10

#### 11 IX

12 Ecology spoke with the City the next day. The City Engineer said  
13 inspectors had been on-site and had requested that Nordevin implement  
14 the Erosion Plan. In a subsequent telephone call, he said the Plan  
15 required that more controls be installed if the listed measures proved  
16 inadequate. The City Engineer also said the City had "no teeth" to  
17 enforce the Plan. See Finding of Fact XVIII, below, about subsequent  
18 City legislation.

#### 19 X

20 Ms. Dutch spoke with Nordevin's owner that day, informing him the  
21 discharge could not continue, and suggesting they hire someone to  
22 assist. Lindstrom stated they should have more source controls in  
23 place. Ecology sent a confirmatory letter on December 1, 1989,  
24

1 outlining the problems observed, alerting to possible enforcement  
2 action, and enclosing the Associated General Contractor's brochure on  
3 erosion control.

4 XI

5 On November 28, 1989 Nordevin hired an engineering consulting  
6 firm, PEI Consultants. The engineer visited the site on November 30,  
7 1989 and made several suggestions, which were later included in a  
8 report. These included more mulch, more check dams, placement of  
9 fabric filter siltation material and washed gravel over and around  
10 catch basins, etc. Nordevin began to implement these measures, and  
11 installed a fabric covered filter over the drain from the lower pond.

12 XII

13 Ecology visited the Nordevin site on December 4, 1990. It was  
14 raining heavily. Extensive erosion was still occurring, with gullyng  
15 and slumping of hillsides, and unpaved roads being undermined.  
16 Sediment-laden runoff was draining into Deer Creek. On this occasion  
17 Deer Creek was also turbid upstream, as it entered the site.

18 Lindstrom told them Nordevin had hired a consulting firm,  
19 additional work had been done, and more was in progress. Ecology took  
20 no enforcement action.

21 The PEI Engineer visited the site again on December 5, 1989,  
22 noting some measures had been implemented, and some existing controls  
23 needed to be repaired due to heavy rains.

XIII

During December and early January 1990, Ecology tried to reach Nordevin to determine their progress, but "telephone tag" resulted. Ecology inspected the site on January 9, 1990. At some point during the inspection, Nordevin's construction manager joined them for part of the time.

It had been raining very hard, and a number of public roads leading to the site were flooded and closed. There is some indication that this storm, at least in other parts of the state, may have been close to a 100 year event. Ecology was not aware at the time that it was a storm of such possible magnitude. Had they believed it to be, they would not have done the inspection.

Muddy waters were seen flowing across the Nordevin property down 28th St. S.E., and then being discharged through a pipe, flowing into Shaw Road Drainage. Ecology took a water quality sample in the Drainage, upstream from the Nordevin discharge. This sample measured 390 NTU for turbidity. Ecology took a sample directly in the discharge coming from the Nordevin property, and it subsequently measured 6,900 NTU. A sample was taken in the Shaw Road Drainage, downstream from the Nordevin discharge, but upstream from where runoff from Janelle Estates entered. This sample later measured 840 NTU.

Sediment-laden waters were also seen flowing down Brookmount Dr. to 16th Ave. S.E., and entering Deer Creek either directly or after entering the upper pond. Flows had created channels and some of these

1 flows were not receiving any treatment before flowing into Deer Creek.

2 XIV

3 Beginning January 11, 1990, Ecology endeavored to schedule a  
4 meeting with Nordevin to discuss the January 9, 1990 inspection.  
5 Nordevin's construction manager expressed the view that Nordevin was  
6 being persecuted by Ecology, and that other construction across Shaw  
7 Road, and from The Pointe were just as bad. Nordevin did not want to  
8 schedule a meeting until the turbidity test results were reported.

9 Ecology went to the Nordevin site on January 25, 1990. Large  
10 "Keep Out" signs were posted on the gates which blocked access to the  
11 property. Ecology did not enter the property, but saw that Deer Creek  
12 and Shaw Creek Drainage were muddy.

13 XV

14 A scheduled site visit was held on January 31, 1990 with three  
15 Ecology inspectors, the City of Puyallup's engineer and construction  
16 inspector, and Nordevin's construction manager.

17 It had been raining lightly. Maintenance of the existing erosion  
18 measures had some gaps. Some of the mulching had washed away and not  
19 been replaced. The upper pond was very full. Runoff from the site  
20 was flowing into the upper pond, and exiting it without passing  
21 through the fabric filter. Water was running down deep gullies on  
22 Brookmount Dr. and on 17th Ave. Some visqueen had blown off a bare  
23 slope above one of the ponds. A storm drain pipe which had been  
24

1 covered with three feet of soil, was now exposed.

2 XVI

3 Water quality samples were taken: in Deer Creek above the upper  
4 and the lower ponds' discharge points, in the lower pond discharge, in  
5 the upper pond discharge, and in Deer Creek below these discharge  
6 points. The samples were subsequently tested at a certified  
7 laboratory and the turbidity was determined to be: 23 NTU upstream,  
8 333 NTU from the lower pond, 136 NTU from the upper pond, and 33 NTU  
9 downstream in Deer Creek.

10 During the inspection, Ecology informed Nordevin's representative  
11 that no sediment-laden waters should leave the Deer Creek site and  
12 enter state waters. Nordevin was provided copies of the State law and  
13 regulations, with specific portions highlighted which addressed the  
14 problem.

15 XVII

16 Ecology and the City visited Kodiak property the same day. There  
17 was little runoff going into Deer Creek. There were indications the  
18 development had contributed a considerable amount of sediment to the  
19 Creek in the past. The development was about 2 years old at the time,  
20 and partially re-vegetated. Two water quality samples were taken on  
21 the Kodiak property. The results subsequently showed exceedances of  
22 water quality standards for turbidity.

XVIII

In January 1990, the City of Puyallup adopted some ordinances on controlling erosion.

After the January 1990 storms, the City replaced the culverts on 25th Ave. to increase their size and to provide for stream habitat within the pipes. It has not been proven that sediment releases upstream from the Nordevin property to Deer Creek directly caused the culvert replacement.

XIX

Ecology again visited the Nordevin site on March 2, 1990. Further erosion control measures had been taken, though some areas of the site remained unprotected. It was a sunny day. There was no surface runoff (other than spring seepage) or pond discharge occurring.

XX

Utility installation at the site was done in the spring of 1990. Nordevin owned all the lots at this time and the streets. In order to install the utilities, the company had to cross Nordevin property to access the utility easement.

XXI

On March 28, 1990 John F. Buchan Construction, Inc., signed an earnest money agreement with Nordevin to purchase lots on the "Deer Creek" property to build homes. The agreement contained an

1 indemnification clause, and a mutual hold harmless clause from Ecology  
2 actions. Actual sale of the lots did not begin until August 1990.

3 XXII

4 In May 1990 Ecology received complaints from residents about the  
5 Deer Creek development. Ecology inspector Dutch again visited the  
6 site on May 15, 1990. It was a cloudy day, not raining. Nordevin's  
7 construction manager came by briefly.

8 The main road and some side roads had been paved and curbed.  
9 Other roads had been regraded in preparation for paving. Erosion  
10 control synthetic netting and fibrous mats were no longer in place.  
11 Steep hillsides near Brookmount Drive had no erosion control in  
12 place. There were indications of recent mudslides into the creek. A  
13 gully created by erosion followed the length of the Drive.

14 The utility trenches were open, with installation occurring, and  
15 there were no erosion controls.

16 The lower pond was almost empty. Some sediment-laden water was  
17 exiting the pond and flowing into Deer Creek. Inspection of 20 storm  
18 grates showed sediment deposits.

19 The construction manager informed Ecology that water in the pond  
20 had been pumped out and applied to a field. He refused to identify  
21 the location of the field. He said he was making an official  
22 complaint about construction work on the east side of Shaw Road  
23 (Janelle Estates), saying all the problems were coming from that  
24

1 property. He also told Ecology about work by Puyallup Public Works  
2 and the railroad which he felt was a problem. Ecology acknowledged it  
3 was investigating other sites. The construction manager said Nordevin  
4 would not take any further erosion control measures until his  
5 competitors have taken similar measures.

6 There is no evidence Janelle Estates drains into this portion of  
7 Deer Creek.

8 Ecology took water quality samples: in Deer Creek upstream of  
9 the Nordevin ponds' discharge, in the lower pond's discharge, and in  
10 Deer Creek downstream of the ponds' discharge. The samples' turbidity  
11 measured: 5.8 NTU upstream, 4300 NTU in the discharge, and 99 NTU  
12 downstream.

### 13 XXIII

14 Ecology also inspected the Kodiak, The Pointe site that same  
15 day. Prior Ecology efforts to locate the property owner had been  
16 unsuccessful. Some potential erosion problems remained, and Ecology  
17 continued its efforts to locate the owner. Ecology sent a letter to  
18 the owner on June 14, 1990, outlining specific problems and warning  
19 about possible enforcement action.

20 An inspection was subsequently held with the construction company  
21 on August 30, 1990. They were warned about possible violations and  
22 control measures were discussed. The Ecology inspection on  
23 September 4, 1990 revealed significant site changes since the previous  
24

1 visit, with extensive clearing and regrading, with most of the site  
2 bare. Erosion control measures were installed by September 6, 1990.  
3 An inspection on September 12, 1990 showed clear drainage with a low  
4 volume leaving the site. An inspection on December 18, 1990 did not  
5 reveal any points of sediment-laden runoff or erosion.

6 Other phases of the Kodiak site development are known as The  
7 Farms at South Hill and Kodiak III, and are not under the same  
8 ownership. Ecology inspection revealed The Farms site has a gentle  
9 grade to it.

10 Ecology has not taken enforcement action against these Kodiak  
11 development operations.

#### 12 XXIV

13 On September 19, 1990 the Department of Ecology issued Orders to  
14 Nordevin, Inc., for alleged occurrences on January 9, 1990,  
15 January 31, 1990, and May 15, 1990: Penalty Order No. DE 90-S224  
16 (\$20,000), and Enforcement Order DE 90-S223. Nordevin received the  
17 Orders September 19, 1990.

18 The Enforcement Order required Nordevin to take specific action,  
19 including identifying the location of the disposal field, submitting  
20 within 30 days of Order receipt an erosion control plan which  
21 addresses slope stabilization, and implementing the plan within 60  
22 days of Order receipt.

XXV

At the time the Orders issued, Nordevin had sold 44 lots to Buchan.

In October 1990, after the Orders had issued, Nordevin fixed one of the erosion control ponds, even though the City had accepted it for ownership. On November 12, 1990 Nordevin had sold 12 more lots to Buchan. On November 27, 1990 another 10 lots were sold, with recordation on December 14, 1990. At that point, Nordevin owned 9 lots. Over time, Nordevin's relationship with Buchan had become somewhat less harmonious, and Nordevin had some practical difficulty accessing the entire site.

XXVI

Water quality samples taken on January 9 and 31, 1990, and May 15, 1990 contained inorganic silt. Testing was done at a certified laboratory. The samples were stored in clear containers, at 4 degrees centigrade. Turbidity of inorganic materials is little affected by light. All samples, upstream, discharge, and downstream, were handled in the same manner.

Based on the evidence presented, the turbidity test results are likely reliable.

XXVII

Sediment in streams can affect aquatic life, inhibiting light, decreasing photosynthesis, and impeding fishes' orientation. Sediment

1 also fills gravel beds, potentially harming macroinvertebrate life and  
2 fish spawning areas. Sedimentation can decrease stream depth, thereby  
3 contributing to a rise in stream temperature which can stress fish and  
4 alter the aquatic environment.

5 No direct evidence was presented on adverse environmental impact  
6 to either stream from the sediment discharges from Nordevin's site .

7 XXVIII

8 Heavy rains are a regular occurrence in the Northwest in the fall  
9 and winter months. It is well known that it is more difficult to  
10 control erosion if there are such factors as graded bare slopes, fine  
11 soils, and/or steep slopes. It is more difficult to control erosion  
12 once it has been allowed to begin.

13 XXIX

14 Any Finding of Fact deemed to be a Conclusion of Law is hereby  
15 adopted as such. From these Findings, the Board adopts these:

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over this matter and these parties.  
19 Chapt. 43.21B and 90.48 RCW.

20 II

21 Under RCW 90.48.080, it is unlawful for any person to drain or  
22 otherwise discharge, or permit or suffer discharge of organic or  
23

1 inorganic matter into waters of this state that cause or tend to cause  
2 pollution.

3 III

4 Deer Creek and the Shaw Creek Drainage are waters of the state.  
5 They are tributaries of the Puyallup River.

6 The River is classified as a Class A water. WAC  
7 173-201-080(81). The two tributaries are Class A waters. WAC  
8 173-201-070(6).

9 Limits for Class A waters are:

10 Turbidity shall not exceed 5 NTU over background  
11 turbidity when the background turbidity is 50 NTU or  
12 less, or have more than a 10 percent increase in  
turbidity when the background turbidity is more than  
50 NTU. WAC 173-201-045(2)(c)(vi).

13 Discharges which exceed these regulatory limits also constitute  
14 pollution or the tendency to pollute under RCW 90.48.080. Specific  
15 environmental harm need not be demonstrated.

16 IV

17 We conclude Nordevin drained, suffered or caused the discharges  
18 into waters of the state on Janaury 9 and 31, 1992, and May 15, 1990.  
19 The discharges violated RCW 90.48.080 and WAC 173-201-045(2)(c)(vi).

20 Regarding May 15, 1990 in particular, Nordevin had allowed the  
21 utility company to cross its property in order to install the utilities  
22 in the easement. Chapt. 90.48 RCW is a strict liability statute.  
23 Nordevin as the owner of the property which surrounded the limited  
24

1 utility easement, remained responsible for the discharge of potential  
2 pollution. Whether there may be a private cause of action between  
3 these parties is beyond this Board's jurisdiction.

4 *Penalty Amount*

5 V

6 The maximum penalty possible per violation per day is \$10,000,  
7 RCW 90.48.140, or \$30,000 total in this case. Ecology assessed \$20,000  
8 total.

9 The purpose of a civil penalty is to encourage the liable party  
10 and the general public to conform to the law. The Board determines the  
11 appropriateness of the penalty amount on a de novo basis, considering  
12 such factors as the scope and extent of the violations, the party's  
13 prior conduct, efforts to rectify the problem, and so forth.

14 The site's difficulty, its fine soils and steep slopes, were known  
15 to Nordevin. Heavy rains are a fact of life in the Northwest.

16 It was the company's ongoing responsibility to control the  
17 erosion, obtaining such professional consultation as necessary,  
18 expeditiously implementing erosion control measures and maintaining  
19 them. Nordevin was late in implementing measures. After Fisheries'  
20 and Ecology's November visits, Nordevin did hire a consultant and at  
21 that point expended reasonable efforts to install erosion controls.

22 Given the unusual storms in early January 1990, we conclude a  
23 corrective goal would not be served by assessing a penalty for the  
24

1 January 9, 1992 exceedance. The violation on January 31, 1990 was not  
2 severe in magnitude, exceeding the standard by only 5 NTU. There  
3 weresome gaps in maintenance. The May 15, 1990 exceedance, however,  
4 was significant, exceeding the standard by 88 NTU. Nordevin had not  
5 adequately maintained erosion controls, and some new controls were  
6 necessary. Moreover at that point, Nordevin refused to take any more  
7 action on erosion.

8 Nordevin does not have a history of past violations.

9 Taking into account all factors, and the maximum penalty possible,  
10 we conclude some mitigation of the \$20,000 penalty is appropriate. We  
11 conclude the penalty should be reduced to \$15,000, with an additional  
12 \$5,000 suspended for two years provided there are no further violations  
13 of water pollution laws. \$10,000 is therefore due.

14 VI

15 Appellants contend that the orders/penalty should be reversed or  
16 abated because others may have been engaging in similar conduct which  
17 went unpunished. There do appear to have been other areas near Deer  
18 Creek with erosion problems, some of which Ecology investigated.  
19 Hopefully the City with its new ordinances can more fully address  
20 erosion problems in the future.

21 Enforcement is to some degree selective. Anyone caught speeding,  
22 for example, is painfully aware of that. We are not convinced that  
23 Ecology's enforcement was due to animus or similar impermissible  
24

1 motive. To the contrary, Ecology personnel expended considerable  
2 efforts to resolve the Nordevin erosion problem, contacting the company  
3 several times in the fall, and not initially assessing a penalty.  
4 Ecology also worked with local and state agencies.

5 It is, moreover, not within this quasi-judicial Board's authority  
6 to determine who should be subject, in the first instance, to  
7 enforcement. In this case any such opining would be on a collateral  
8 matter, and key parties are not present to represent their position.

9 *Enforcement Order*

VII

10 Ecology's authority to issue the Enforcement Order is determined  
11 at the time it was issued. There clearly was an erosion control  
12 problem at the Nordevin site on May 15, 1991. Nonetheless, Nordevin  
13 stated it would not undertake additional control measures absent  
14 erosion control by others. Moreover, the Nordevin representative  
15 refused to disclose information about where pond waters were being  
16 discharged. When the Order issued on September 17, 1992, Nordevin  
17 still owned 31 lots, and owned some lots after the 30 and 60 day  
18 compliance dates. Ecology was within its authority to issue an Order  
19 to correct the problem. In so concluding, we do not address whether  
20 Nordevin had an ongoing responsibility for property sold after the  
21 exceedances, as no party has raised or briefed that issue.

22 As a practical matter, however, given the sale of almost all the  
23 lots, we decline to enforce the order provisions against Nordevin for  
24

1 the development and implementation of an erosion control plan.

2 Nordevin is still required to provide the information on the disposal  
3 of sediment-laden waters.

4 VIII

5 Any Conclusion of Law deemed a Finding of Fact is hereby adopted  
6 as such.

7 From these Conclusions of Law the following is issued:  
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ORDER

Nordevin, Inc. violated Chapt. 90.48.080 and WAC  
173-201-045(2)(c)(vi) on January 9, 31 and May 15, 1990.

The Department of Ecology Penalty Order No. DE 90-S224 is  
AFFIRMED, except that the \$20,000 penalty is reduced to \$15,000, and  
\$5,000 more is suspended provided Nordevin does not violate water  
pollution laws for two years from the issuance of this order. \$10,000  
is due.

Enforcement Order No. DE 90-S223 is AFFIRMED, except that Nordevin  
is RELEASED from compliance from all provisions except those requiring  
the disclosure of information on the disposal of sediment-laden waters  
to an unnamed field.

DONE this 1<sup>st</sup> day of July, 1992.

POLLUTION CONTROL HEARINGS BOARD

  
JUDITH A. BENDOR, Presiding

  
HAROLD S. ZIMMERMAN, Chairman

  
ANNETTE S. MCGEE, Member

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